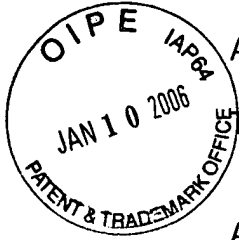# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket Number US010712

Applicant: Jack E. Haken

Title: **WIRELESS INTERACTIVE RENDEZVOUS SYSTEM FOR DELIVERING GOODS AND SERVICES**

Application Number: 10/029,832

Filing Date: December 27, 2001

Examiner: Jamisue E. Webb

Art Unit: 3629

APPLICANT'S BRIEF BEFORE THE BPAI

Applicant appeals from and seeks reversal of the final rejection mailed December 07, 2005 of Claims 1-8, 10, 11, 13 and 14 in the above-identified patent application.

1. **The Real Party in Interest:**

   Koninklijke Philips Electronics N.V., a publicly held Netherlands Corporation, is the assignee of record and the real party in interest in this patent application.

2. **Related Appeals and Interferences**

   None

3. **Status of Claims**

   Claims 1-8, 10, 11, 13 and 14 stand finally rejected as obvious under 25 U.S.C. 103(a). Claim 13 also stands rejected under 35 U.S.C. 101.

Claims 9 and 12 are cancelled and withdrawn. All pending claims are appealed herein.

4.   **Status of Amendments**

There have been no amendments made subsequent to the final rejection.

5.   **Summary of the claimed subject matter**

The invention of claims 1-5, 7, 10 and 14 is a method that coordinates time and position information, including the geographic position of a wireless device which is used to place an order, with route and delivery system information to allow dynamic delivery of fast food, personal items or other goods and services to customers who are walking, driving or traveling.

As an example of the invention, a group of office workers may decide to eat lunch in a park. Before they leave their office, they place their food order via a cellular telephone or a wireless pda that includes position-determining functionality. In response to menu questions, they indicate that they would like dynamic delivery of the food on their way to the park, their expected departure and/or arrival time, their method of transportation, and their expected route from their office to the park. The order information is entered into a system server that also has access to databases that include: maps and other routing information, various locations where the food order can be prepared, estimates of expected preparation time for the food items ordered, location and availability of potential deliver persons, and information about other pending and anticipated orders. Using this information the server chooses a preparation location and delivery

person and then calculates a candidate rendezvous position where the customers and the delivery person can meet to effect delivery of the food. The server transmits this information to the customer's wireless terminal. The customers can either confirm or the candidate position or make proposals for modifications thereof.

Once the order has been confirmed, the server uses position information from the customer's wireless terminal, order status information from the preparation location and position tracking information from a pda or other locator module that is carried by the delivery person to monitor and, if necessary, dynamically update the rendezvous position.

The method steps are illustrated with respect to Figure 2 of the patent application: At step I, a customer in office 60 uses a wireless data terminal to place an order for food with the food company. For example, at 11:45 am the customer might indicate that he desired delivery of a chicken sandwich anytime before 12:30 pm and that he plans to remain at his present location until 12:00 noon and then travel by walking to the fountain 24 in park 20.

At step II, in response to the order the server 80 checks its database to determine whether the item ordered could be available in the desired time frame, before 12:30, at each of its facilities (70 – 74).. At step II, the server also checks whether one or more delivery persons are available to make a delivery from each facility during the relevant time frame. At step V, the server applies rendezvous calculation methods and algorithms to determine potential positions for a delivery using map and obstacle information corresponding to the

map of Figure 1 and separate cost metrics for the customer and each potential delivery person. At step VI, the food company may consider some potential rendezvous times or locations to be undesirable, more desirable or less desirable for deliveries. These and similar criteria can be used to generate an ordered list of candidate rendezvous positions from those that were identified during step V. At step VII the list of candidate rendezvous positions is transmitted to the customer's terminal.

At step VIII, the server places the order with the relevant facility and delivery person to initiate preparation and delivery of the food. At step IX, the server regularly polls the facility selected for preparing the food, the customer's terminal and the delivery person's terminal to monitor the status of the order and the locations of the customer and delivery person. At step X, The customer and delivery person meet at the rendezvous site and delivery is made.

Figure 3 is a map corresponding to Figure 1 that is overlaid to show an example of routes and possible rendezvous locations between a customer who leaves building 60 at noon and a delivery person who leaves location 70 traveling by taxi at 12:20 pm. The taxi follows route RT along the highway H1 and then onto street S1. The customer may take alternate routes R1 or R2 respectively along street S1 to two potential rendezvous positions: X1 on the street outside of park gate 27 at 12:27 pm and X2 in parking lot 31 at 12:30. The server may be programmed to favor the second rendezvous location X2 because a parking lot rendezvous is considered to be less costly than is a curbside rendezvous on a busy street.

Dependent claims 6 and 11 are directed to the server computer that is programmed to implement the above-described methods. The server is illustrated symbolically in Figure 1 as number 70 and is described in the specification on page 6 in the paragraph beginning at line 9. The programming of the server is described, for example with regard to programming steps II, V, VIII and IX.

Claim 13 is directed to a electrical signals transmitted on a cellular telephone system that are modulated to implement the sending and receiving steps of Claim 1. Use of a cellular telephone to transmit the information of the first receiving step is described in the paragraph beginning at line 14 on page 2 of the specification and the corresponding sending signal in the paragraph spanning pages 3 and 4.

Applicant does not believe that either independent Claim 1 or dependent claim 13, which are the broadest claims separately argued herein, contain any means plus function or step plus function limitations.

6. **Grounds for Rejection**

Claims 1-8, 10, 11, 13 and 14 stand finally rejected as obvious under 35 U.S.C. 103(a) over a combination of the Ohler *et al* and Kraisser *et al* patents. The O'Meara application is also applied against Claim 6 (not argued separately herein). Claim 13 also stands rejected under 35 U.S.C. 101.

7.   Argument

<u>Claims 1-8, 10, 11 and 14</u>

Independent claim1 is directed to a method for facilitating a delivery of items to a mobile customer that calculates optimum supply locations for rendezvous with one or more potential deliverers along a customer's pre-specified route of travel. Claim 1 and the claims dependent therefrom stand rejected as obvious over U.S. Patent 6,701,299 ("Kraisser ") taken in combination with U.S. Patent 6,424,910 ("Ohler").

Kraisser, assigned to United Parcel Service of America, appears to only describe methods for selecting and scheduling optimum trucks and routes for transporting packages between fixed locations. Kraisser does not anticipate that the customer receiving the delivery of a package will be traveling, and thus does not describe or suggest a system that receives a customer's anticipated route of travel or plans any rendezvous along that route. Inasmuch as the fixed location for delivery is predetermined and specified in advance by the customer, Kraisser's system does to propose delivery positions to the customer. The Examiner tortures the plain meaning of the claim language when she suggests that <u>the time and date</u> of a proposed delivery can be read as the "delivery rendezvous position" required by the language of claim 1.

The Examiner relies on Ohler to supply the missing elements of calculating a rendezvous along a customer's anticipated route of travel. In doing

so she misinterprets and misapplies Ohler's teachings. Ohler appears to describe a simple navigation system that calculates potential meeting locations for plural users who only specify their initial positions. Ohler's system chooses a suitable meeting place based on travel time, distance or other criteria and then calculates and specifies the travel routes of both (all of) the users. Ohler does not describe or suggest that any of his users pre-specify an anticipated route of travel. The calculation for selecting a common meeting place (e.g. a centrally located restaurant) calculated to be equidistant between a group of known positions is fundamentally different than that of calculating an optimum rendezvous along a specified path. So too the calculation for selecting an optimum deliverer from a group of potentials is very different than that of finding a place where all pre-specified members of a group can meet. Since the problem that Ohler proposes to solve and the methods which he uses to solve it are fundamentally different from that of claim 1 and of the claims which depend therefrom, Ohler, taken alone or in combination with Kraisser, cannot make Applicant's invention obvious to a person of ordinary skill in the art and the rejection under 35 U.S.C. should be reversed.

Claim 13

Applicant repeats the arguments above with regard to the obviousness rejection of Claim 13.

Claim 13 stands further rejected as directed to unpatentable subject matter under 35 U.S.C. 101. This rejection is based on the position that an

electrical signal is a "non-tangible object" which is not being received or transmitted. The Examiner's rejection is incorrect as a matter of law.

In re Beauregard 53 F.3d 1583, 35 U.S.P.Q. 2d 1383 (Fed. Cir. 1995) clearly established that a signal carried on a suitable medium does in fact constitute statutory subject matter.

Furthermore, an electrical signal is tangible. The Merriam-Webster Online Dictionary defines tangible as:

"1   a : capable of being perceived especially by the sense of

touch : PALPABLE b : substantially real : MATERIAL

2 :   capable of being precisely identified or realized by the mind

<her grief was tangible>

3 :   capable of being appraised at an actual or approximate value

<tangible assets>"

A data modulated signal is unquestionably capable of being perceived through the use of suitable circuitry such as found in a cellular telephone (for example) and is therefore real in the sense that it can be detected and therefore exists; it is capable of being precisely identified (such as through the use of such circuitry; and further capable of being appraised at an actual or approximate value when the signal is demodulated by suitable receiving circuitry.

The Examiner's final rejection of Claim 13 states, "An electrical signal is a non-tangible (sic. intangible) object, it is not being received anywhere, it is not being transmitted." This ignores the clear language of Claim 13 that does not claim a signal as an abstraction, but rather:
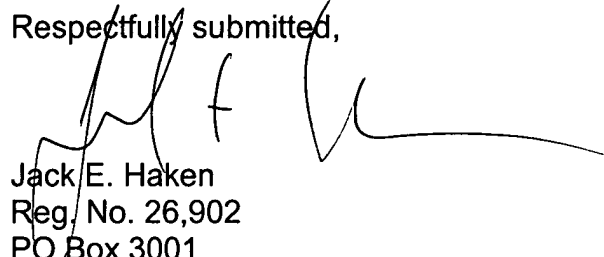
"13 Electrical signals **transmitted** on a cellular wireless communication system that are modulated with information **to implement the sending and receiving steps** of claim 1. (Emphasis added)"

There the Examiner has failed to consider Claim 13 as a whole and there is thus no basis for the Examiner's position that the claimed electrical signals are "[an] object" that is not being transmitted or received anywhere.

Inasmuch as the § 101 rejection is based on the erroneous premise that electrical signals are non-tangible as well as on an incomplete consideration of the claim language at issue, it is submitted that the § 101 rejection is untenable and should be reversed. Claim 13 should be allowed.

Respectfully submitted,

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January 5, 2006

8. Claims Appendix

1.   A method for facilitating delivery of items to a mobile customer comprising:

receiving order data from a customer's collocated wireless terminal, which order data includes identification of at least one ordered good or at least one ordered service, a present position of the customer's wireless terminal, and an anticipated route of travel of the customer;

identifying one or more possible supply locations, on the customer's anticipated route of travel, at which the at least one ordered good or the at least one ordered service can be supplied to the mobile customer;

identifying one or more possible deliverers for the at least one ordered good or the at least one ordered service from said possible supply locations;

determining rendezvous criteria for the customer and each identified deliverer from each identified delivery location;

calculating candidate rendezvous positions which satisfy the determined criteria; and

sending information proposing delivery rendezvous positions to the customer's wireless terminal.

2.   The method of claim 1 wherein the order data includes desired delivery time information.

3.   The method of claim 1 further comprising the step of calculating one or more proposed routes for the customer to each proposed rendezvous position.

4.   The method of claim 3 wherein the order data includes customer travel method and travel constraint information and wherein the step of calculating the proposed routes incorporates the travel method and constraint information.

5. The method of claim 1 further comprising the steps of:

receiving from the customer's wireless terminal authorization to deliver the at least one ordered good or the at least one ordered service at a selected one of the proposed rendezvous positions;

dispatching a selected deliverer to deliver the at least one ordered good or the at least one ordered service from a selected supply position to the selected one rendezvous position; and

calculating a route for the deliverer to follow from the selected delivery position to the selected rendezvous position.

6. The method of claim 5 further comprising the steps of

receiving from the customer' wireless data terminal and from a deliverer's wireless data terminal which is collocated with the deliverer, data with indicates their respective actual positions enroute to an intended rendezvous position;

calculating an updated delivery rendezvous position based upon the actual positions of the customer and the deliverer;

informing the customer and deliverer of the updated delivery position.

7. The method of claim 6 further comprising the step of transmitting to customer's wireless data terminal and to the deliverer's wireless data terminal route information to the updated delivery position.

8. A server computer programmed to implement the method of claim 6.

10. The method of claim 5 further comprising the step of transmitting a customer identity-confirming message to the customer's wireless data terminal.

11. A server computer programmed to implement the method of Claim 1.

13. Electrical signals transmitted on a cellular wireless communication system that are modulated with information to implement the sending and receiving steps of claim 1.

14. A method of claim 1, wherein the order data and the information are wirelessly transmitted via information modulated electrical signals.

9. Evidence Appendix

Not Applicable

10. Related Proceeding Appendix

Not Applicable

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of

JACK E. HAKEN

Serial No. 10/029,832

Filed: December 27, 2001

Atty. Docket

US010712

Group Art Unit 3629

Examiner Jamisue E. Webb

Title: WIRELESS INTERACTIVE REDENZVOUS SYSTEM FOR DELIVERING
         GOODS AND SERVICES
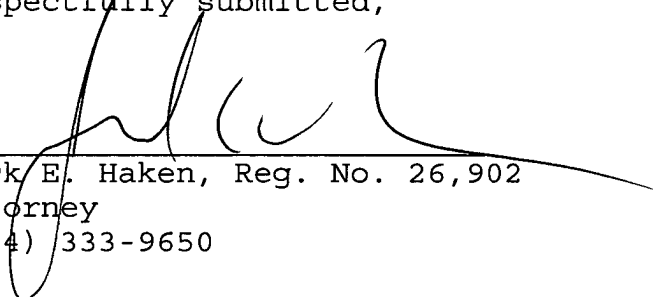
Commissioner for Patents
Alexandria, VA 22313-1450

Sir:

Enclosed is an Appeal Brief in the above-identified

patent application.

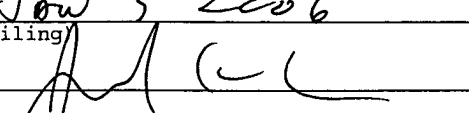Please charge the fee of $500.00 to Deposit Account

No. 14-1270.

Respectfully submitted,

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